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9 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 MRI INTERNATIONAL, INC., a Nevada  
11 Corporation,

12 Petitioner,

13 vs.

14 THE UNITED STATES OF AMERICA,

15 Respondent.

No. 2:13-cv-00676-APG-(PAL)

REPLY TO PETITIONER'S RESPONSE TO  
THE UNITED STATES' MOTION TO  
DISMISS THE PETITION TO QUASH THE  
SUMMONS TO WELLS FARGO BANK NA

16 The United States of America ("United States"), through undersigned, respectfully  
17 replies to Petitioner's Response to the United States' motion to dismiss as follows:

18 **INTRODUCTION:**

19 Petitioner, MRI International, Inc. ("MRI"), filed a petition to quash the administrative  
20 summons issued by the Internal Revenue Service ("Service") to Wells Fargo Bank NA. MRI  
21 pled unsupported and wholly conclusory allegations that failed to show any good cause for  
22 granting the extraordinary relief requested. MRI also failed to establish that the Court had

jurisdiction. Accordingly, the United States moved to dismiss. MRI responded with four points. First, MRI asked the Court to let it have until August 20, 2013 to effect proper service. Second, MRI says it met its burden under Rule 8. Third, MRI says the Court should exclude the declaration of the Revenue Agent that issued the summons. And lastly, MRI says that it should be allowed time to take discovery. For the reasons that follow, the Court should reject each of MRI's arguments and dismiss MRI's petition with prejudice.

### **ARGUMENT:**

#### **1. MRI ABANDONED ITS PRETENSES.**

In its Response, MRI made no attempt to support any of the wholly conclusory allegations made in its original petition. MRI, for example, never substantiated its claim that complying with the summons would cause Wells Fargo Bank NA to violate the Health Insurance Portability and Accountability Act (HIPPA).<sup>1</sup> *See generally* No. 4. MRI identified no part of any treaty implicated by compliance with the summons. *Id.* MRI also abandoned its unfounded procedural related allegations of wrongdoing or any related omissions. *Id.*

#### **2. THE COURT SHOULD SUMMARILY REJECT MRI'S ARGUMENTS.**

##### ***a. MRI admitted that the Court lacks jurisdiction.***

The United States sought dismissal *inter alia* for want of jurisdiction. *See* No. 3-1 at 7 n.2. MRI conceded that at present this Court lacks jurisdiction. *See* No. 4 at 2-3. MRI, however, counters that "MRI does not have to take any steps to cure any failure of service, as the time to effectuate service has not yet run." *Id.*

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<sup>1</sup> Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 Stat. 1936 (Aug. 21, 1996).

1 MRI never explains why it requires additional time. Clearly using the full 120 days delays  
 2 the investigation even further. Regardless, even if MRI requires 120 days for effecting service, the  
 3 Court should dismiss the petition pursuant to Rules 12(b)(4) and 12(b)(5) if that period lapses and  
 4 MRI has failed to effect service. *See* No. 3-1 at 7 n.2; *see also Mollison v. United States*, 568 F.3d  
 5 1073, 1077 (9th Cir. Nev. 2009).

6 ***b. MRI alleges no facts that let the court reasonably infer bad faith.***

7 MRI cites authorities that ostensibly support a liberal pleading standard. *See, e.g.,* No. 3  
 8 at 4. MRI's authorities, however, never apply Rule 8 in the context of a petition to quash a  
 9 summons.<sup>2</sup> As such, MRI's authorities have no bearing on the instant motion.

10 In contrast, the United States outlined the authorities that set forth MRI's burden for  
 11 refuting the motion to dismiss MRI's petition. *See* No. 3-1 at n.4. Nowhere in its Response has  
 12 MRI meet that burden. MRI's conclusory allegations fall well short of showing any abuse of  
 13 process or bad faith, much less stating any claim for which relief can be granted. As such, the  
 14 Court should dismiss MRI's petition to quash under Rule 12(b)(6).

15 ***c. The Court should rely on the Revenue Agent's Declaration.***

16 MRI asks the Court to exclude the declaration of the Revenue Agent that issued the  
 17 summons to the Wells Fargo Bank NA attached to the United States motion to dismiss. No. 4  
 18 at 6. MRI implies some impropriety, either for the declaration addressing issues outside the  
 19 pleadings or because MRI has not had an opportunity for discovery. No. 3 at 5-6.

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20 <sup>2</sup> MRI, for example, includes this quote: "[s]pecific facts are not necessary" but fails to explain that in the case at  
 21 issue the *pro se* prisoner actually pled detailed facts, including that (1) stopping hepatitis C medication put his life  
 22 at risk; (2) that the risk would endure for one year; (3) and that prison officials knew of the risk but refused to act.  
*See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing those facts and noting the prisoner "bolstered his claim by  
 making more specific allegations in documents attached to the complaint and in later filings").

1 MRI's argument lacks merit. Courts routinely rely on a revenue agent's sworn  
2 declaration in the context of summons enforcement, including when deciding to dismiss  
3 petitions to quash. *See, e.g., United States v. Stuart*, 489 U.S. 353, 359-60 (1989); *United*  
4 *States v. Powell*, 379 U.S. 48, 56-58 (1964); *Fortney v. United States*, 59 F.3d 117, 119-20 (9th  
5 1995); *Ponsford v. United States*, 771 F.2d 1305, 1307 (9th Cir. 1985). Thus, the Court may  
6 and should rely on the Revenue Agent's sworn declaration as establishing the United States  
7 *prima facie* case for enforcement.

8 ***d. MRI offers no reason for delaying the Revenue Agent's investigation.***

9 MRI intimates that with additional discovery, it might uncover some facts that support  
10 its conclusory allegations. *See* No. 4 at 6-7. The United States made its *prima facie* showing  
11 of good faith, and the case law outlining MRI's burden in light of that showing does not give  
12 MRI the right to take discovery. *See* Part 2.c *supra*. Moreover, accepting MRI's invitation  
13 would vitiate the Rule 8 pleading standard. Rule 8 articulates a minimal pleading standard  
14 precisely to thwart litigants such as MRI from invoking "the costly machinery associated with  
15 our civil discovery regime on the basis of 'a largely groundless claim.'" *Pace v. Swerdlow*, 519  
16 F.3d 1067, 1076 (10th Cir. 2008) (Gorsuch, J., concurring).

17 Here, MRI offers no basis for invoking the machinery of discovery. "Unless a taxpayer  
18 opposing enforcement of a summons makes a 'substantial preliminary showing' of an alleged  
19 abuse, neither an evidentiary hearing nor limited discovery need be ordered by the district  
20 court. *United States v. Tiffany Fine Arts, Inc.*, 718 F.2d 7, 14 (2d Cir. 1983), *aff'd sub nom* 469  
21 U.S. 310, 324 (1995); *see also Fortney*, 59 F.3d at 121 (citing *Stuckey*, 646 F.2d at 1372);

1 *United States v. BDO Seidman*, 337 F.3d 802, 809 (7th Cir. 2003); *Copp v. United States*, 968  
2 F.2d 1435, 1438 n.1 (1st Cir. 1992); *Alphin v. United States*, 809 F.2d 236, 238 (4th Cir. 1987);  
3 *United States v. Balanced Fin. Mgmt., Inc.*, 769 F.2d 1440, 1444 (10th Cir. 1985); *United*  
4 *States v. Kis*, 658 F.2d 526, 539 n.39 (7th Cir. 1981); *United States v. Nat'l Bank of S. D.*, 622  
5 F.2d 365, 367 (8th Cir. 1980).

6 **3. CONCLUSION:**

7 For the reasons set forth above, the Court should grant the United States' motion and  
8 dismiss with prejudice MRI's petition to quash the summons issued to Wells Fargo Bank NA.

9 Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that service of the foregoing has been made on this date  
by the Court's CM/ECF system on the following:

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